IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 277 OF 2006

Makhanlal Agarwal and others. ... Petitioners.

V/s.

Deputy Director of Enforcement
and others. ... Respondents.

Mr.Mathews Nedumpara for the petitioners.

P.S.Jetly for respondent Nos.1 and 2.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 28th June 2006.

P.C. :

. Rule, returnable forthwith.

. By consent of parties petition is taken up for final hearing.

. Mr.Jetly waives service on behalf of respondent Nos.1 and 2.

2. The learned counsel for the petitioners raised short question as to whether liability arising out of penalty imposed on the Company, viz. M/s.Gemini Agritech Limited; can be recovered from the directors of the company. He contends that in absence of any show-cause-notice and/or adjudication of the liability against the directors of the company; it is not open for the respondents to issue notice or to recover the arrears from the

petitioners- directors. In support of his submission he placed reliance on the judgment of this Court in the case of **Sunil Parmeshwar Mittal v. Dy.C.(Recovery Cell), C.Ex., Mumbai-I**, (2005) 188 ELT 268 (Bom).

3. Per contra, Mr.Jetly, learned counsel appearing for respondent Nos.1 and 2 tried to support the action of the respondents, however, he could take his submission to the logical end on the face of judgment of this Court. Since the contention raised by the petitioners is covered by our judgment in the case of **Sunil Mittal** (supra), for the reasons stated in the said judgment, all the three impugned notices dated 22nd September, 2005 incorporated at Exh.'D' to the petition are quashed and set aside.

3. In the result, petition is allowed. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

4. It is, however, made clear that this order shall not come in the way of the respondents, if they desire to take action against the respondents in accordance with law.

(J.P.DEVADHAR, J.) **(V.C.DAGA J.)**